THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.21052 OF 2005

Between:

National Cooperative Consumers Federation of India Ltd., rep. By its Branch Manager, Hyderabad.

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….Petitioner

vs.

Sri Kalahastiswara Swamy Temple, Sri Kalahasti, Chittor District and another

….Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.21052 OF 2005

ORAL ORDER

The petitioner- National Cooperative Consumer Federation of India Limited assails the order dated 17-08-2005 of the 1st respondent canceling the contract for supply of coconuts to Sri Kalahastiswara Swamy Temple, Sri Kalahasti, Chittor District awarded to the petitioner and approved by the Commissioner of Endowments, admittedly without notice or opportunity to the petitioner and without even communication of the order canceling the earlier approval granted.

The petitioner emerged as the highest tenderer for the supply of coconuts to the Devastanam for the years 2004 and 2005 and was awarded a contract for the said purpose and for those years. The 2nd respondent-Commissioner by proceedings dated 02-04-2005 extended the contract period of the 1st respondent-Devastanam with the petitioner by two more years. One R.Jyothi Rddy filed W.P.No.9706 of 2005 in this Court assailing the aforesaid extension of the contract in favour of the petitioner by two more years. On 02-04-2005 this Court granted interim suspension of the 2nd respondent's extension order dt.02-04-2005. Later the interim suspension was vacated at the instance of the Devastanam filing an application seeking vacation of the interim order. The petitioner thereafter and pursuant to the extension granted by the 2nd respondent, continued supplying the coconuts.

On 16-09-2005 the 1st respondent published a notification in the daily press calling for tenders for supply of coconuts to the temple for a period of six(6) months from 01-10-2005 to 31-03-2006 stipulating 27-09-2005 as the last date for submitting an application for issuing of the tender schedules. When the petitioner made enquiries it learnt that the 2nd respondent cancelled his earlier order dt.2-4-2005 extending the contractual tenure of the petitioner by two more years, by a proceedings dt.28-07-2005. Neither was a notice or opportunity afforded to the petitioner nor the 2nd respondent's order dt.28-07-2005 communicated to the petitioner. An inter-office communication appears to have been made by the 2nd respondent to the 1st respondent on the basis of which the 1st respondent passed orders dt.17-08-2005. The order dated.17-08-2005 of the 1st respondent makes a even more interesting reading. It reads as under;

> " in pursuance of the Orders issued in the Commissioner's reference third cited, the contract for the supply of provisions/Coconuts to the Srikalahastheswara Swamivari Devasthanam, Srikalahasthi approved and communicated in commissioner's reference 1st/2nd cited is hereby cancelled with immediate effect."

On a true and fair construction of the 1st respondent's order dt.17-08-2005 it would appear that the 1st respondent–Executive Officer cancelled the Commissioner of Endowment's Order extending the contract of the petitioner by two more years. What

is authority of the Executive Officer to cancel the Commissioner's proceedings is not apparent. Nor does the learned Government Pleader for Endowments share with this Court the source of power of the 1st respondent to cancel the 2nd respondent's proceedings. The learned counsel for the 2nd respondent however states that the language is no doubt awfully defective but the 2nd respondent merely wanted to convey that the 1st respondent himself cancelled his own earlier order and the fact cancellation is merely communicated to the petitioner.

Be that as it may. The Commissioner has, clearly and apparently, the power under proviso to Rule 3(1) of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights(other than Agricultural Lands) Lease and Licenses Rules,2003(for short "the Rules) to permit lease of any property or right otherwise than by way of public action, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowments will not suffer. If the Commissioner had failed to record the reasons in writing (while granting the extension of lease earlier) it is a failure for which the Commissioner might be actionable by the appropriate disciplinary authority. The reasons to be recorded in writing are not stated to be communicable to any person. It is no part of the petitioner's obligation to ensure that the Commissioner records reasons as required by Rule 3(1) of the Rules, nor does the petitioner have a control or authority over the Commissioner. Commissioner of Endowments has not also established a practice of communicating the orders passed by him to either the beneficiaries or victims of his decision making process. In any event even if the Commissioner of Endowments was latter satisfied that an earlier order granting extension of lease was either defective on account of not recording reasons or the decision itself was not in public interest or the interest of the Devastanam, he nevertheless had an obligation in public law to afford an opportunity after issuing a notice to the person with whom the contract has been entered into in exercise of the initial discretion under Rule 3(1). This obligation of compliance with the principles of natural justice is neither expressly nor by any necessary implication excluded from the scheme of Rule 3(1).

For the aforesaid reasons, in the considered view of this Court, the order of the 1st respondent dt.17-08-2005 and of the 2nd respondent dt.20-07-2005 canceling the earlier order of the 2nd respondent dt.2-4-2005 are set aside. The 2nd

respondent, if he now desires to pass any orders adverse to the interest of the petitioner, is at liberty to do so. The 2nd respondent shall have to comply with the principles of natural justice.

As the 2nd respondent has not communicated the order canceling his earlier decision dt.2-4-2005 to the petitioner nor had passed the subsequent order dt.20-07-2005, after notice and opportunity to the petitioner and in gross violation of principles of natural justice and had acted in a manner no authority even minimally exposed to administrative law principles would act, this Court considers it appropriate to allow the writ petition with costs quantified at Rs.5,000/-(Rupees five thousand only) payable jointly by the 1st and 2nd respondents to the petitioner within a period of three(3) weeks from the date of receipt of a copy of this Order.

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GODA RAGHURAM,J

7TH MARCH 2006

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